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Massive document shredding at Cherokee County DSS raises questions

by Kate Martin • July 9, 2019



Cherokee County Department of Social Services paid a contractor to shred a massive amount of

documents in 2018, at the same time as a criminal investigation into unlawful child seizures. Photo illustration by Frank Taylor / Carolina Public Press

Massive numbers of documents went into totes for a shredding service last year at the Cherokee County Department of Social Services, despite orders to preserve records related to a federal lawsuit and a state criminal probe over unlawful seizures of children.

While it's not clear that protected documents were deliberately destroyed, at least some of the files involved in the situation are known to be missing.

If protected files related to child welfare were destroyed in violation of multiple orders not to do so, it could irreparably harm the county's ability to defend its actions against the federal lawsuit. It could also result in criminal charges at both the state and federal level for those involved, according to multiple law enforcement sources.

The board that had governed DSS at that time and had suspended former DSS director **Cindy Palmer** in March 2018 was not advised in advance of the costly and unprecedented effort to purge files, which peaked between June and August 2018.

According to former DSS board member **Robert Merrill**, the board wouldn't have allowed it.

"That never would have happened," Merrill told CPP last month. "We would have said no to that. We understand there is going to be some bad legal implications of doing that. If we thought there was anything illegal, we would have said something."

DSS board meeting minutes show no mention of the shredding until a passing reference at a July 10, 2018, session, well after the shredding began and with its most intense phase already underway.

According to the minutes, the board did not receive any indication that the shredding was many times more costly and greater in volume

than what the department had been doing up to that time.



A Shred-it truck parks in a Buncombe County office plaza on Monday. Frank Taylor / Carolina Public Press

A pressing need to create space

On June 12, 2018, a Cherokee DSS supervisor sent an email to the N.C. Department of Health and Human Services that was so urgent, she used all capital letters to describe a desperate need for more office space:

"WE ARE WORKING TO SCAN ALL INFORMATION IN OUR FILE ROOM AND DESTROY OLD REPORTS, AS ALLOWED," said the email from **Renee McLean**. "THIS IS OF THE UPMOST IMPORTANCE DUE TO NEEDING EXTRA SPACE FOR OFFICES IN OUR COUNTY."

A day earlier, Palmer returned to DSS in a new role after being

suspended for nearly two months and resigning as director.

As CPP has previously reported, at the time of her rehire, Palmer was a target in the ongoing State Bureau of Investigation probe into the agency's practice of unlawfully seizing children without judicial authority.

The DSS board's acting attorney, **David Moore**, told the board in May 2018 that Palmer may have lied under oath in a trial last year about the extent and timing of her knowledge of unlawful seizure procedures. Moore advised the board to take the SBI's presence as an indication that it serious about pursuing apparent criminal offenses.

He also warned against allowing her to return. According to notes from one May meeting, "Palmer's lack of oversight has cost the county tens of thousands of dollars. Moore said that he is confident that if the board decided to remove Ms. Palmer as director, the board would prevail in any legal actions. Mr. Moore said that the renegade culture at DSS that now exists is pervasive and destructive."

Who made the decision to allow Palmer to resign and then rehire her as business officer remains unclear, though a committee that included interim DSS director **Kay Fields** was assigned to screen candidates for the business officer job.

Fields, who is now Graham County DSS director, has declined to discuss the hiring decision directly.

The actions of DSS employees, including Palmer, in the weeks following her rehire set in motion an accelerated document shredding operation. The cost for shredding during that period dwarfed any other shredding bills at DSS during a four-year period, according to county invoices and procurement records.

A typical \$90 monthly shredding bill from before 2018 doubled in February 2018, then ballooned to more than \$3,300 in July, with the effort spilling into another large bill in August.

Throughout the period, DSS prepared dozens of totes full of documents for shredding, but at a much greater pace once Palmer returned to the agency.

As business officer, Palmer's signature authorized payment of these bills.

Asked by CPP about the shredding, Fields said the department needed to clear its file room for meeting and office rooms.

To her knowledge, Fields said, no child welfare documents affected by orders to preserve records went into the totes for shredding. However, Fields left the agency in July, while the shredding was ongoing.

Fields said the initiative was both to free up space and move the county toward compliance with a state mandate to convert records to electronic format.

County officials have said it was standard county practice to convert any documents needing to be preserved to digital format before the originals were shredded.

On June 10, 2018, two days before McLean's email to DHHS and one day before Palmer's official rehire date, DSS received an estimate from an outside company that it would cost more than \$57,000 to electronically preserve records the county was supposed to keep.

The estimate included more than 480,000 pages of Child Protective Services documents.

Ultimately, DSS scaled back its scanning effort, instead paying more than \$14,000 to One Source Document Solutions to scan 190 boxes of files, invoices show. Why fewer files were scanned and whether they were still among those caught up in the massive shredding effort remains unclear.

As of July 2019, the space that DSS employees said they so urgently needed last year has still not been put to any new use.

A time to keep and a time to shred

The shredding project came at a turbulent time for Cherokee DSS.

In December 2017, the state learned the department was taking children from their parents without judicial approval, using a document called a “Custody and Visitation Agreement.”

The following week, DHHS told all 100 counties to immediately cease using such agreements. A DHHS spokesperson later told CPP that no other county is known to have been using the agreements or anything similar.

Lawyers in the related civil suit told the county to preserve child welfare records. In a letter, attorneys **Melissa Jackson and David Wijewickrama** told Palmer and then-DSS attorney **Scott Lindsay** to “preserve any electronically stored information or physical evidence of any kind relating to the (unlawful child seizures) or any other similar such agreements.”

In January 2018, Palmer advised the DSS board that “after lengthy consideration,” closed session minutes say, she had exercised her authority in deciding to terminate Lindsay’s duties with DSS for his involvement with the CVAs.

In February 2018, a DSS worker contacted Stericycle, the company now in charge of Shred-it, to ask for a truck to empty the agency’s containers.

“When you come on (Feb. 28), will you be able to empty containers, let us refill them and empty them again?” DSS worker **Mandi Amos**

wrote.

"Our containers have been full for over a week, so we have shred in boxes, and a shopping cart, and most anything sitting that we can put shred in. We are in the process of converting paper files to electronic files, hence the blow up of shred."

In March 2018, the shredding service issued a bill of \$180.26, to empty 10 64-gallon totes since February. Before that, the county had been paying about \$90 per month to empty a typical five totes, invoices show.

Shortly after, in a March 2018 ruling, Cherokee County District Court Judge **Tessa Sellers** invalidated the CVAs.

She ruled that the documents, which had been in use for at least a decade, were "the product of both actual and constructive fraud" on behalf of Cherokee DSS, its employees, Palmer and former DSS attorney Lindsay.

The same day as Sellers issued her ruling, an **Associated Press investigation** revealed Cherokee County's custody and visitation agreement practices. District Attorney **Ashley Welch** read the story and called the SBI immediately.

"Until that story came out in the AP my office knew nothing about it," Welch told CPP this week. "I reached out to Judge Sellers and realized what she was dealing with and at that point we asked for an investigation."

A few days after the phone call, Welch said she and two district court judges asked for a formal investigation by the SBI, which began shortly after.

On March 19, 2018, the state stepped in to take over the county's child welfare operations, though not other aspects of DSS.

At month's end, N.C. DHHS released a **scathing assessment** of the office's practices under Palmer's leadership. She "failed to execute her duties as director for key procedures in child welfare," the letter said.

On April 2, 2018, acting N.C. DHHS Child Welfare Administrator **Robert Cochran** issued several directives in an email titled "Updates: Child Welfare Operational Procedures."

First among them, **Cochran's email** said, "Until further notice, no Cherokee Co. DSS child welfare records may be destroyed."

The DSS board suspended Palmer with pay in **mid-April**.

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Some events from this period are unclear because minutes from an unknown number of DSS board meetings in **March, April and May are missing**. County officials **released notes** one member took at a few of these meetings to CPP last month, but these are not official minutes and do not account for all of the meetings for which minutes are missing.

Meanwhile, the larger-than-normal shredding effort continued at about the same clip. Then, invoices show that the bill issued in July ballooned to \$3,311.87 to empty 73 64-gallon totes, more than seven times the volume of the already increased monthly shredding that had been underway since February.

The push for this increased pace of shredding coincided with Palmer's return to DSS in June 2018, county records show.

On June 12, 2018, the day after county records show Palmer returned to work, acting DSS attorney Moore and board chair **Karen Kephart** both issued their resignations to the DSS board. Kephart also announced to the board in open session that Palmer had resigned, minutes say. While not documented in the minutes, coverage by the Cherokee Scout shows that Palmer's rehire, while not secret, was not announced during the open session.

Kephart has declined to talk with CPP. Moore has not been willing to discuss Palmer's rehire or his own resignation.

On June 21, 2018, Palmer emailed a copy of Shred-it's contract and complained about the lack of regular service.

Board meeting minutes from July 10, 2018, say there was "some discussion of an overcrowded file room. ... They will be purging some old files and they will be shredded."

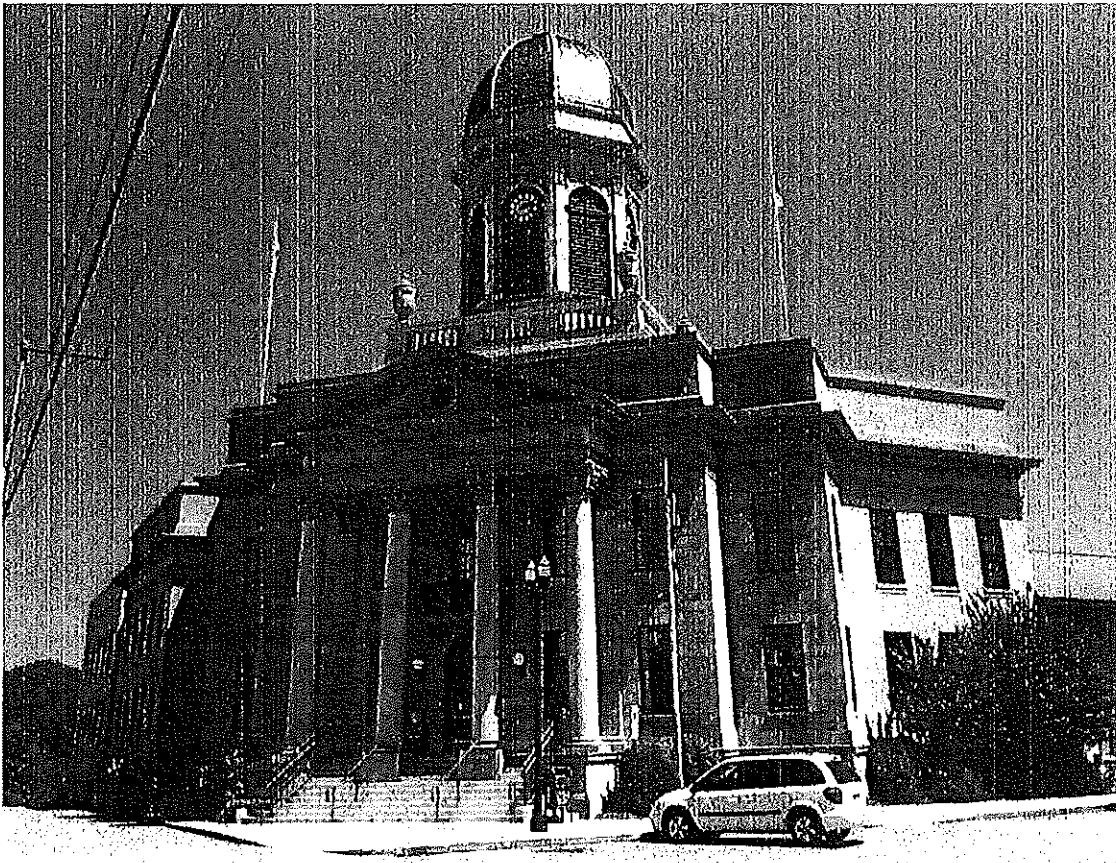
The minutes do not indicate how long the document purge had been underway or that it had recently accelerated dramatically. This was the first board meeting after Moore's departure as attorney.

Later in July, around the time the shredding effort reached its peak, Fields left as interim director.

In September 2018, Cherokee County commissioners voted to dissolve the DSS board and take up the duties of the DSS board themselves.

In October 2018, commissioners confirmed an earlier DSS board decision to hire former Rutherford County DSS Director **Amanda McGee** as the new Cherokee County DSS director. At the end of October, DHHS returned control of child welfare programs to local authorities.

- September 2018 — \$349.24



Cherokee County Courthouse in Murphy. Frank Taylor / Carolina Public Press

Retention of support and power

Prior to the day in April 2018 when DSS board members voted to suspend Palmer, several employees submitted letters in favor of Palmer, imploring board members to stay their hands.

Susan Landis, a former DSS board member, said some employees and some members of the community lobbied to keep Palmer. Landis was elsewhere in the state at the time but received a packet of supportive letters when she returned.

“To this day I have never looked at it, partly because I didn’t want to

But at the time, the SBI's investigation had not concluded. And the federal civil litigation over the CVAs continues.

In April 2019, the SBI turned its findings over to District Attorney Welch, who then recused herself and turned the SBI report over to the state Attorney General's Office.

Her recusal was due to a conflict of interest, she told CPP. Welch's office often prosecutes cases brought by the Cherokee County Sheriff's Office, and Sheriff **Derrick Palmer** is married to Cindy Palmer, one of the primary subjects of the investigation.

The Attorney General's Office is considering whether to bring any charges against Cindy Palmer and others based on the results of the SBI's investigation.

Paying for the shredding

The following list shows bills that Cherokee County DSS received from Shred-it for services between November 2017 and September 2018. Bills typically arrived midmonth and covered services from the later portion of the previous month plus the first part of the current month. For example, the July 2018 bill covered services from mid-June through services in mid-July.

- November 2017 — \$90.13
- December 2017 — \$90.13
- January 2018 — \$90.13
- February 2018 — no bill
- March 2018 — \$180.26
- April 2018 — \$182.88
- May 2018 — \$367.76
- June 2018 — \$212.62
- July 2018 — \$3,311.87
- August 2018 — \$410.01

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be influenced by outside forces," Landis told CPP last month.

One day she also got a call from a woman she did not know well who attended church with the Palmers.

"She called me and said, 'For what it's worth ... I just want you to know they are good, Christian people, and they support the community,'" Landis said. "I just listened to her and thanked her, and that was it."

Sheriff Palmer is the former pastor of Vengeance Creek Baptist Church and is a regular guest on the local Christian country radio station WKRK.

His administration is also the subject of multiple SBI investigations over allegations of inmate mistreatment at the county jail. During radio segments, the sheriff has invoked biblical language to discuss critics of the Palmers' leadership in terms of **spiritual warfare**.

During Cindy Palmer's absence at DSS in April and May 2018, employees strained against temporary leadership, DSS board closed session meeting minutes show.

Nearly two months later, Palmer returned to the department.

At the request of CPP, Landis cut open the earlier packet of letters supporting Palmer for the first time and looked at the names. Among them was a four-page handwritten letter from McClean, the DSS supervisor who contacted DHHS about shredding documents within a day of Palmer's return to DSS.

Though stripped of supervisory duties after her rehire, Palmer retained tremendous power.

As business officer, she was still in charge of creating a department budget that exceeded \$45 million per year. Any money the agency

spent went directly through her.

She had sweeping access to files throughout the office, including personnel and case files, the job description says. The business officer monitors and reviews all contracts with DSS and is responsible for signing off on all expenses, the job description says.

Palmer is also responsible for making sure the office follows state and federal spending rules.

Former Cherokee County DSS Director Cindy Palmer was rehired as business officer in June 2018, just ahead of a major increase in purging files. Her signature appears authorizing payment on the July 2018 Shred-it invoice for \$3,311 in shredding services. Kate Martin / Carolina Public Press

A question of financial accountability

Federal, state and county funds combined pay for more than a dozen different programs at DSS offices, all operating under complex and esoteric funding schemes.

To keep it all straight, workers in different divisions fill out a document called a day sheet, which records what the workers do throughout the day. Some parts of their job can be paid for with federal money, others with state or local funds. Sometimes it's a mix of funding.

Any mistake on day sheets can cost the respective county thousands of dollars and lead to lower allocations in the next budget cycle, according to DHHS. Less money may mean no salary increases for line employees, lowered benefits and increased local taxes.

Palmer first became the DSS business officer in 2010, then director in 2016, before returning to business officer in June 2018.

The business officer is also in the position to review employee day sheets, correct errors on those day sheets and submit office expenses for **eventual reimbursement** while working with others in the county to ensure accuracy, the business officer job description says.

Federal and state authorities periodically audit county DSS agencies, so day sheets must be kept for a certain amount of time. Day sheets are used for a wide variety of programs at DSS, including child welfare cases.

The day after Palmer returned to work from nearly two months of paid leave, emails reviewed by CPP show, DHHS received an inquiry on how long Cherokee DSS had to keep day sheets.

“Have you had a chance to find out who I need to contact to find out the retention schedule for day sheets?” an email from Fields to DHHS asked.

Fields told CPP last month that the question of day sheets was not resolved to her satisfaction before she left on July 20, 2018.

However, records show a reply from DHHS came hours later pointing

to the 57th page of a 113-page manual: “Records may be destroyed on a fiscal year basis,” it reads, when the state DHHS notifies DSS that the records are released from audits.

But the passage in DHHS’s manual includes an asterisk with the note: “No destruction of records may take place if audits or litigation are pending or may be reasonably anticipated.”

As early as March 2018, Judge Sellers told the county to preserve all child welfare records.

The DSS “shall not allow anyone, either directly or indirectly, to destroy, modify, delete, edit or in any way engage in any conduct affecting any files involving minor children” the order reads in part. “Violation of any of these provisions shall be an act of Contempt and shall be heard by this Court accordingly.”

Even if older child welfare records and day sheets were destroyed in accordance with a retention schedule, Wijewickrama said that doesn’t matter.

“That spoliation order that Judge Sellers signed would trump any retention schedule,” he said.

If a deliberate violation of state law enforcement, state court and DHHS orders not to destroy documents occurred, it would potentially create violations of various state laws.

But because the civil suit has federal status and because some DSS child welfare funding was federal, consequences of such destruction would potentially be federal.

If documents covered by the federal civil lawsuit were deliberately destroyed, it could potentially constitute several federal criminal actions, according to **Chris Swecker**, retired FBI assistant director and former chair of the N.C. Governor’s Crime Commission.

Talking with CPP by phone last week, Swecker said such action would potentially draw federal charges of obstruction of justice and contempt of court, in addition to state charges.

Denial issued, counsel retained

Via email, Palmer said she was not in charge of last summer's shredding operation.

"I was not the director at the time the shredding was done," Palmer wrote.

While her job description includes paying the agency's bills and her signature is on invoices that pay for the shredding costs, Palmer said, "I did not have a role in the shredding process itself."

However, in her email to County Manager Wiggins on June 21, 2018, Palmer described the DSS office's request to Shred-it for an increase in visits in February, when she was DSS director.

"Since February, we have requested to get serviced every 2 weeks," she wrote. "That hasn't happened yet."

Most invoices provided to CPP show the dates of service, the cost of shredding and the amount of material collected.

"I contacted 'sales' to see about getting a 'purge' — which is when they would come pick up more than 10 boxes," Palmer wrote. "They would have to know how many bins we would have and give us a quote."

Palmer declined a phone interview and referred questions to her attorneys at Cheshire Parker Schneider, a law firm in Raleigh whose attorneys have defended high profile criminal defense clients, including congressmen and governors.

Of child welfare records or related day sheets that may be missing, one of her attorneys, **Hart Miles**, told CPP, “My understanding is those records were kept electronically, and that again she wouldn’t have any insight to why they were missing.”

Attorney Wijewickrama, part of the legal team pursuing civil damages for parents and their separated children, said he is astounded anyone would destroy documents in the face of a judge’s order.

“It is fascinating to me that they had this urgency to destroy documentation after they received spoliation letters,” Wijewickrama said recently.

“After the judge issued the order, DSS was not in a position to destroy any documentation covered in that letter.”

In February 2018, court testimony from former DSS supervisor **David Hughes** indicated something had happened to some documents. Hughes described an effort to locate all CVA cases, including older ones, after DSS workers learned they were illegal.

“It appears there are some missing files,” Hughes testified. “I do know there was some (missing) from 2009 because ... that just came up one day when we were in the file room.”

Miles, Palmer’s attorney, told CPP that whatever was happening with the CVAs through 2017 was not the fault of his client, who was only following the counsel of former DSS attorney Lindsay and Palmer is not a lawyer.

CPP contacted Lindsay’s attorney, who declined to make him available to answer questions for this article.

However, Moore, the interim DSS attorney after Lindsay’s departure, offered a different assessment from Miles during a DSS board closed session in April 2018.

According to board meeting notes, a board member asked whether Lindsay could provide “cover” for Palmer against prosecution. Moore told them it could not work that way under the circumstances.

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During a May closed session, the notes show Moore’s continued concerns about Palmer’s honesty and competence. Summarizing Moore’s advice to the board, the notes say, “The investigation into Palmer’s behavior as director indicates a hands-off, casual management style, a lot of information suggests that she had to know about the use of CVAs despite her denial in court, and a structureless supervision style.”

He discussed the situation with CPP last month.

“What I’ve always said is that it appears she may have committed perjury based on the testimony she gave and other evidence available,” Moore said.

He noted that she had attended a “very specific training in 2016, with regard to safety agreements and custody, and when petitions should be filed and when there should be judicial oversight.”

Asked whether this meant Palmer should have known better, Moore said, “Everybody should have known better.”

Creation of an unfilled void

CPP asked for any reports on what and how much was shredded from Cherokee County commissioners, which now serves as the current governing body for DSS, as well as from the former DSS board. State archive guidelines suggest, but do not mandate, recording these reports into board meeting minutes.

No such reports were entered into the minutes, though some minutes from spring 2018 remain missing.

Merrill, the former DSS board member who told CPP that the board was not asked and would not have approved of the shredding in advance, said he was aware that space had been a concern at the agency for some time. He was also aware of a move to convert paper files into electronic ones to save space.

Fields, the former interim DSS director in place when the shredding reached its apex, told CPP that shredding was not only to create space but served as a precursor to an extensive modernization effort she envisioned for Cherokee DSS, which she left while the shredding was underway.

"It's very time-consuming to keep paper records because you have to have filing cabinets," she said. Electronic records are a few keystrokes away, whereas paper records, stored in filing cabinets on the first floor of the building, must be retrieved, copied and returned, she explained.

Regardless, DSS was running out of offices for new hires to the department, and they needed the space, Fields said.

County Manager Randy Wiggins told CPP that he was looped in on some communications about the shredding at DSS since such large and previously unbudgeted shredding and scanning expenses would come close to the end of the county's fiscal year.

"They were making sure we have the dollars available before the end of the fiscal year," Wiggins said.

Wiggins said the plan was to create two small, private interview rooms once there was room in the file area. But that hasn't happened so far.

"There have been no renovations to this point," Wiggins said. "Not in the file room."

The county manager said the space has potential.

"What you basically have is a very large room that has files in it and a couple of small desks for people to sit down and work on files or whatever," Wiggins said.

But there may not ever be a need to take advantage of the empty space, because another suite at the Cherokee County DSS building will open up soon.

The Tennessee Valley Authority maintains a small regional office there but plans to leave in September, Wiggins said.

Carolina Public Press Managing Editor Frank Taylor also contributed to this article.

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